IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 803 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

JAT ABDULLA RAMJAN

Versus

GEB, THROUGH CHAIRMAN

Appearance:
1. Special Civil Application No. 803 of 2000
MR CH VORA for Petitioner No. 1
MR VT ACHARYA for Respondent No. 1-3
MS RV ACHARYA for Respondent No. 1-3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/09/2001

C.A.V. JUDGEMENT

Jat Abdulla Ramjan-petitioner has filed this petition for a writ of mandamus or a writ in the nature

of mandamus or any other appropriate writ, order or direction quashing and setting aside the office order dated 17.12.1999 passed by the Superintending Engineer, Gujarat Electricity Board. The petitioner further prayed for further direction to the respondent Board to allow the petitioner to perform his duties as a vehicle driver in pursuance of appointment order dated 12.2.1999.

2. The facts giving rise to this petition are as under:

2.1 It has been contended in the petition that the petitioner's father Shri Ramju K. Jat was serving with the respondent Board as Chowkidar and he retired from the service on 30.4.1994.

2.2 It has been contended in the petition that thereafter the father of the petitioner had filed an application dated 20.12.1997 before the Executive Engineer-respondent No. 3 for the post of driver for the petitioner under G.S.O. 295 and further requested to consider the petitioner for the post of driver and call him for the interview. Thereafter, the Board had called the petitioner for interview on 21.5.1998 in pursuance of the communication dated 5.5.1998 issued by respondent No. 3. The Board asked the petitioner to remain present in the interview along with original certificates as indicated in the aforesaid communication dated 5.5.1998. As the petitioner was successful in the interview and as the petitioner was found to be suitable for the post of driver, the Board appointed him as driver by appointment order dated 12.2.1999. The Board also directed the petitioner to join the duties on or before 22.2.1999 with the Deputy Engineer, City Sub-Division, Bhuj, Kutch. The petitioner joined the duty on 16.2.1999.

2.3 Thereafter on 18.2.1999 without hearing the petitioner the Board passed an order and kept the appointment order in abeyance.

2.4 It appears that the Board thereafter by its order dated 17.12.1999 cancelled the appointment orders of four candidates including the petitioner without assigning any reasons.

3. Being aggrieved and dissatisfied with the aforesaid action of the respondent Board, the petitioner filed the present petition on 29.1.2000. Thereafter, the petitioner had amended the petition in which the petitioner has also challenged the Circular dated 9.2.1999 in which the Board had directed that no

recruitment of driver to be made by the Field Officer.

4. When the matter was placed for hearing before this court on 14.2.2000, this court issued notice and on 5.7.2000 this court issued rule and by way of interim order it is directed that no appointment to the post of vehicle driver shall be made without considering the petitioner for such appointment.

5. When the matter was placed before me, Mr. C.H. Vora, learned advocate for the petitioner has contended that the order of the Board in cancelling appointment of the petitioner without hearing the petitioner is illegal and liable to be set aside. In support of the same, he has relied on the decision of the Apex Court in the case of SHRIDHAR VS. NAGAR PALIKA, JAUNPUR reported in AIR 1990 SC 307. In para 8 of the judgement the Hon'ble Supreme Court has observed as under:-

> "The High Court committed serious error in upholding the order of the Government dated 13.2.1980 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's Order had been passed without affording any opportunity of hearing to the appellant, therefore the order was illegal and void. The High Court committed serious error in upholding the Commissioner's Order setting aside the appellant's appointment. In this view, Orders of the High Court and the Commissioner are not sustainable in law."

6. He has also relied on the judgement of the Apex Court in the case of SHRAWAN KUMAR JHA VS. STATE OF BIHAR reported in AIR 1991 SC 309.

7. Ms. Acharya, learned counsel, appeared on behalf of the Board. She has relied on the affidavit filed on behalf of the Board. The Board submitted that initial appointment of the petitioner was on probation and even in paragraph No. 4 of the appointment letter it was

stated that respondent No. 1 had reserved its right of termination of services of an employee during the probationary period at any time without assigning any reason or without giving any notice. It has been further submitted that as the petitioner was on probationary period, because of administrative problems he was terminated from the service by order from the Head Office received on 18.2.1999. It has been further submitted that the Board is running into heavy debts. In view of this, the Board has decided to take certain drastic steps to run the administration of the Board economically.

8. It has been an admitted by the Board that the petitioner was not heard before he was terminated from services.

9. In my view the contention of the petitioner is covered by the decision of the Hon'ble Supreme Court and therefore, this petition requires to be allowed only on the ground of violation of rule of natural justice. Therefore, the order dated 17.12.1999 (at Annexure-F to the petition qua the petitioner) terminating the services of the petitioner from the Gujarat Electricity Board without hearing after he was appointed, is quashed and set aside. I have set aside the impugned order on the ground of violation of rule of natural justice. I have not decided the matter on merits of the case. It is open for the Board to take necessary action after hering the petitioner.

10. In the result, the petition is allowed. Rule is made absolute with no order as to costs.

(K.M. MEHTA, J)

(pkn)